

The parties agree that on July 17, 1998, claimant sustained personal injury by accident arising out of and in the course of employment with respondent. On that date, claimant was repairing the irrigation system on respondent's golf course when he received an electrical shock that knocked him off his feet. Claimant alleges that the accident caused

a meniscus tear in the right knee, pain in the low back, numbness in his right thumb and right index and middle fingers, loss of grip strength in the right hand, and constant ringing in his ears.

In the August 3, 2000 Award, Judge Clark relied upon the functional impairment opinions provided by Dr. Philip R. Mills, whom the Judge had selected to provide an independent medical evaluation, and awarded claimant benefits for a six percent permanent partial general disability. The Judge also awarded claimant 17 weeks of temporary total disability benefits.

Claimant contends Judge Clark erred by relying upon Dr. Mills' functional impairment opinions instead of the opinions from claimant's medical expert, Dr. Pedro A. Murati, who determined that claimant sustained a 19 percent whole body functional impairment as a result of the July 1998 accident. Accordingly, claimant requests the Board to increase the permanent partial general disability to 19 percent.

Conversely, respondent and its insurance carrier request the Board to affirm the holding that claimant has a six percent permanent partial general disability but reduce the number of weeks of temporary total disability benefits that were awarded. Accordingly, respondent and its insurance carrier request the Board to modify the Award by reducing the number of weeks of temporary total disability benefits by 6.14 weeks.

The only issues before the Board on this appeal are:

1. What functional impairment did claimant sustain as a result of the July 17, 1998 accident?
2. How many weeks of temporary total disability benefits is claimant entitled to receive?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Award should be affirmed.
2. As indicated above, on July 17, 1998, claimant sustained an electrical shock that knocked him down. As a result of the accident, claimant experiences ongoing symptoms in his right knee, right hand, pain in his low back and ringing in his ears.
3. The parties presented the testimony from two physicians who evaluated claimant for purposes of this claim, Dr. Philip R. Mills and Dr. Pedro A. Murati.

Dr. Mills, who is board-certified in physical medicine and rehabilitation and board-certified in independent medical evaluations, evaluated claimant in January 2000 at the

Judge's request. Dr. Mills diagnosed a medial meniscal tear in the right knee, resolved septic arthritis in the right knee, mechanical low back pain secondary to degenerative disk disease, mild right thumb and finger numbness, and electrical shock. The doctor ruled out right carpal tunnel syndrome as electroneurodiagnostic studies were normal.

In Dr. Mills' opinion, claimant sustained a one percent whole body functional impairment for the low back injury, a four percent whole body functional impairment for the quadriceps atrophy in the right leg, and a one percent whole body functional impairment for the right thumb and finger numbness due to the July 1998 accident. Combining those ratings creates a six percent whole body functional impairment, according to the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides).

4. On the other hand, Dr. Pedro A. Murati, who was hired by claimant as his medical expert witness and who is also board-certified as an independent medical examiner and board-certified in physical medicine and rehabilitation, examined claimant in August 1999. Dr. Murati diagnosed right knee pain due to a torn medial meniscus, lumbosacral strain with loss of range of motion, and right carpal tunnel syndrome secondary to electrical shock.

Dr. Murati rated claimant under the AMA Guides as having a five percent whole body functional impairment for the lumbosacral strain, a five percent whole body functional impairment for the loss of range of motion of the lumbosacral spine, a six percent whole body functional impairment for right carpal tunnel syndrome, and a three percent whole body functional impairment for the right quadriceps atrophy. Those functional impairment percentages comprise a 19 percent whole body functional impairment. In evaluating claimant's right upper extremity, Dr. Murati did not consider any nerve conduction studies that claimant had undergone.

5. The Board agrees with Judge Clark that Dr. Mills' opinions are the more persuasive and should be adopted. The doctor was brought into this claim as a neutral physician and was asked to provide an unbiased medical opinion. Further, Dr. Mills considered the results of electroneurodiagnostic tests, which Dr. Murati apparently did not have. Accordingly, the Board concludes that claimant sustained a six percent whole body functional impairment as a result of the July 17, 1998 accident.

6. The Judge awarded claimant temporary total disability benefits for 17 weeks representing the period from July 18, 1998, through November 13, 1998. Respondent and its insurance carrier now contend that claimant returned to work following the July 1998 accident on approximately October 1, 1998, and, therefore, claimant's right to temporary total disability benefits should have terminated as of that date. In support of that contention, respondent and its insurance carrier offered into evidence a purported copy of a November 24, 1998 letter from Secure America to respondent's insurance carrier that indicates claimant interviewed for a position with Secure America on September 15, 1998,

and started working on October 1, at which time he began sales training on a commission basis. The letter stated, in part:

Due to a recent employment transition in our Human Resource area, the information provided your office has been further reviewed for accuracy. Mr. Taylor interviewed for a position with Secure America on September 15, 1998, completing appropriate paperwork to commence employment upon his subsequent release from his medical doctor. The date Mr. Taylor started to work was October 1, at which time he began sales training on a commission fee basis.

Please make this change a part of you [sic] records.

At regular hearing, claimant testified that he believed he began working for Secure America as a sales consultant sometime in November 1998. The medical reports from both Dr. Mills and Dr. Murati fail to indicate in their medical histories when claimant's treating physicians released him to return to work. But according to Dr. Mills' January 19, 2000 medical report, claimant was receiving back treatment from a Dr. Feary in October and November 1998, and in December 1998 consulting with Dr. Paul Stein regarding his back pain. According to the same medical report, claimant was also continuing to see his knee surgeon in December 1998.

The Board concludes the November 24, 1998 letter from Secure America, which claimant objected to on the basis of lack of foundation, hearsay and lack of authentication, should not be admitted into evidence. Without proper foundation testimony, there is no way the Board can gauge the letter's accuracy. Additionally, the statements made in the letter have not withstood the test of cross-examination, and the statements appear to correct or contradict other information that Secure America had provided.

The Board affirms the Judge's finding that claimant is entitled to receive 17 weeks of temporary total disability benefits.

AWARD

WHEREFORE, the Board affirms the August 3, 2000 Award entered by Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of December 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Diane F. Barger, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director